

NOTICE OF PROPOSED RULEMAKING
TITLE 13. PUBLIC SAFETY
CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

Article 1	New Article
R13-14-101	New Section
R13-14-102	New Section
R13-14-103	New Section
Article 2	New Article
R13-14-201	New Section
R13-14-202	New Section
R13-14-203	New Section
R13-14-204	New Section
R13-14-205	New Section
Article3	New Article
R13-14-301	New Section
R13-14-302	New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 22-137(A)(1)

Implementing statute: A.R.S. § 22-137(A) and (B)

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: XX A.A.R. XX

4. The agency's contact person who can answer questions about the rulemaking:

Name: Tracy Unmacht

Address: 818 N First Street; Phoenix, AZ 85004; and

P.O. Box 13116; Phoenix, AZ 85002

Telephone: (602) 343-6280

Fax: (602) 712-1252

E-mail: cestb@azcapitolconsulting.com

Web site: www.cestb.az.gov

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Constable Ethics, Standards and Training Board (CESTB) was established at A.R.S. § 22-136 in 2006. Under A.R.S. § 22-137, the CESTB is required to make rules regarding constables, complaints, investigations and hearings, discipline, and training grants. The CESTB has made some informal rules but has never made the rules using the required Arizona Administrative Procedure Act, even though the CESTB is not exempt from the APA. In this rulemaking, the CESTB makes the required rules.

An exemption from Executive Order 2017-02 was provided for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor's Office, in an e-mail dated August 8, 2017.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The CESTB does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The CESTB expects the rulemaking to have minimal economic impact. The CESTB is simply making the rules required by statute. A constable against whom a complaint is made will incur the expense of defending against the complaint. This expense can be avoided by complying fully with A.R.S. § 22-131 and R13-14-103.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Tracy Unmacht

Address: 818 N First Street; Phoenix, AZ 85004; and
P.O. Box 13116; Phoenix, AZ 85002

Telephone: (602) 343-6280

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E-mail: cestb@azcapitolconsulting.com

Web site: www.cestb.az.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Wednesday, February 21, 2018

Time: 10:00 A.M.

Location: 818 N. 1st Street; Phoenix, AZ 85004

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The CESTB does not issue permits.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law directly applicable to the subject of these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

- R13-14-101. Definitions
- R13-14-102. Conduct of the Board
- R13-14-103. Constable Code of Conduct

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

Section

- R13-14-201. Filing a Complaint; Jurisdiction
- R13-14-202. Complaint Processing
- R13-14-203. Hearing Procedures
- R13-14-204. Disciplinary Action
- R13-14-205. Review or Rehearing of Decision

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

Section

- R13-14-301. Request for Grant Applications
- R13-14-302. Evaluation of Grant Applications

ARTICLE 1. GENERAL PROVISIONS

R13-14-101. Definitions

In this Chapter, unless the context requires otherwise:

“Board” means the Constable Ethics, Standards, and Training Board established under A.R.S. § 22-136(A).

“Complainant” means a person, other than the Board, that files a complaint regarding a constable.

“Constable” means an individual elected under A.R.S. § 22-102 and any deputy constable appointed, employed, or authorized by the county board of supervisors.

“Party” has the meaning specified at A.R.S. § 41-1001.

“Person” has the meaning specified at A.R.S. § 1-215.

“Respondent” means a constable against whom a complaint is filed.

R13-14-102. Conduct of the Board

- A.** Board members shall elect the officers specified under A.R.S. § 22-136(B) annually. An individual elected as an officer may serve successive terms without limit.
- B.** The Board shall comply with A.R.S. Title 38, Chapter 3, Article 3.1 regarding open meetings. A person that wishes to have an item placed on the agenda of the Board for discussion and action shall submit the item in writing to the Board at least 48 hours before the Board meeting.
- C.** A Board member present at a Board meeting in real time by telephone or other electronic means is present for the purpose of determining a quorum.
- D.** Board members shall comply with A.R.S. Title 38, Chapter 3, Article 8 regarding conflicts of interest.

R13-14-103. Constable Code of Conduct

A. A constable shall:

1. Comply with all federal, state, and local law;
2. Act in a manner that promotes public confidence in the office of constable;
3. Be honest and conscientious in all professional and personal interactions;

4. Avoid a conflict of interest, including the appearance of a conflict of interest, in the performance of constable duties;
5. Perform constable duties without:
 - a. Bias or prejudice; and
 - b. Regard for kinship, social or economic status, political interests, public opinion, or fear of criticism or reprisal;
6. Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;
7. Provide complete and accurate answers to questions regarding court and other procedures available to an individual who comes in contact with the constable's office;
8. Act at all times in a manner appropriate for an elected public official;
9. Be courteous, patient, and respectful toward all individuals who come in contact with the constable's office;
10. Inform an individual who asks for legal advice that as a matter of law, a constable is not allowed to give legal advice while performing the constable's official duties; and
11. Comply with all training requirements relating to being a constable.

B. A constable shall not:

1. Use or attempt to use the constable position to obtain a privilege or exemption for the constable or any other person;
2. Use public funds, property, or other resources for a private or personal purpose;
3. Solicit or accept a gift or favor from any person known to do business with an Arizona justice court;
4. Solicit or accept payment other than mandated compensation for providing assistance that is part of an official duty;
5. Use words or engage in other conduct that a reasonable person would believe reflects bias or prejudice based on race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
6. Disclose confidential information received in the course of performing an official duty unless disclosure is required by law; or

7. Use information received in the course of performing an official duty for personal gain or advantage.

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

R13-14-201. Filing a Complaint; Jurisdiction

- A.** A person may submit to the Board a written complaint regarding a constable using the complaint form on the Board's web site. The complainant shall include in the complaint facts that allege the constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years. The complainant may attach to the complaint form any documents or other evidence relevant to the complaint.
- B.** When the Board receives a written complaint under subsection (A), the Board shall review the complaint to determine whether the complaint is within the Board's jurisdiction.
 1. The Board shall find a complaint is within the Board's jurisdiction if the complaint meets the standards in subsection (A). If the Board determines the complaint is within the Board's jurisdiction, the Board shall process the complaint as described in R13-14-202.
 2. The Board shall find a complaint is not within the Board's jurisdiction if the complaint does not meet the standards in subsection (A). If the Board determines the complaint is not within the Board's jurisdiction, the Board shall provide notice to the person that submitted the complaint and the constable who was the subject of the complaint.
- C.** If the Board obtains information the Board believes may indicate a constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years, the Board may initiate a complaint against the constable. If the Board initiates a complaint against a constable, the Board shall process the complaint as described in R13-14-202.

R13-14-202. Complaint Processing

- A.** If the Board determines a complaint is within the Board's jurisdiction, as described under R13-14-201, the Board shall send notice to the respondent and:
 1. A copy of the complaint received, including any documents or other evidence attached to the complaint form; and
 2. A request that the respondent submit a written response to the allegations in the complaint within 45 days after the date on the notice.

- B. The Board shall review the respondent's written response and conduct any investigation the Board determines is necessary.
- C. Before allowing review of the complaint investigative file, the Board may redact confidential information.

R13-14-203. Hearing Procedures

- A. Except as modified by this Chapter, the Board shall conduct a hearing regarding a complaint according to the procedures at A.R.S. Title 41, Chapter 6, Article 10 and the rules of the Office of Administrative Hearings at 2 A.A.C. 19.
- B. If the Board finds after a hearing that a complainant is a vexatious litigant, as defined at A.R.S. § 12-3201, the Board may take the same action with regard to the complainant as the Superior Court would be allowed to take under A.R.S. § 12-3201.

R13-14-204. Disciplinary Action

If the Board determines disciplinary action under A.R.S. § 22-137(A)(5) is warranted, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:

1. Prior disciplinary offenses;
2. Dishonest or self-serving motive;
3. Pattern of misconduct; multiple offenses;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Harm caused to a member of the public.

R13-14-205. Review or Rehearing of Decision

- A. A party aggrieved by a Board order or decision may:
 1. Seek judicial review of the order or decision under A.R.S. § 12-904; or
 2. Except as provided in subsection (G), file a written motion for review or rehearing with the Board not later than 30 days after service of the order or decision. For purposes of this subsection,

service is complete on personal service or five days after the date the Board order or decision was mailed to the party's last known address.

- B.** A motion for rehearing or review may be amended at any time before it is ruled on by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.
- C.** The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party's rights:
1. An irregularity in the administrative proceedings of the Board or the prevailing party or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
 2. Misconduct of the Board or the prevailing party;
 3. An accident or surprise that could not be prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
 5. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
 6. The order or decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.
- E.** Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.
- F.** When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.
- G.** If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any

application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.

H. A complainant:

1. Is not a party to:
 - a. A Board administrative action, decision, or proceeding; or
 - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

R13-14-301. Request for Grant Applications

- A.** As required under A.R.S. § 22-138, the Board makes grants for constable training and support and equipment.
- B.** The Board shall issue requests for grant applications that meet the standards required under A.R.S. § 41-2702.
- C.** The Board shall post the requests for grant applications on the Board's web site at least six weeks before grant applications are due. The Board shall send written notice of the online availability of the requests for grant applications to all constables and any person that has submitted a written request to receive the notice.

R13-14-302. Evaluation of Grant Applications

- A.** Members of the Board shall review and evaluate each grant application in a manner consistent with A.R.S. § 41-2702. The Board shall base the Board's decision regarding an application only on the criteria specified in the request for grant applications.
- B.** The Board shall vote on each application and award grants at a public meeting.